THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 24910 OF 2001

Dated: 07-10-2005

Between:

K.S.Subbaiah Pillai & Co.(India) Ltd.,

Tobacco Packers & Exporters, Chilakaluripet,

Guntur District, represented by its Resident

Manager K.V.Suresh Babu, s/o Nageswara Rao,

Aged about 38 years, r/o H.No.12-B, Skyline

Apartments, Basheerbagh, Hyderabad. …Petitioner

A N D

1. The District Collector, Hyderabad and Others …Respondents

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ORDER:

1. This writ petition has been filed by K.S.Subbaiah Pillai and Company (India) Limited, Tobacco Packers and Exporters, Chilakaluripet, Guntur District, represented by its Resident Manager K.V.Suresh Babu, with a prayer to issue any

appropriate order or direction or a writ more particularly a writ in the nature of Mandamus directing the 3rd respondent to release/return sale deed dated 3-12-1999 forthwith.

2. V.S.T. Industries Limited, formerly known as Vazir Sultan Tobacco Company Limited is the absolute owner of an extent of 30,204 square meters comprising Survey Numbers 60/1/2, 60/5/1, 60/5/2 and 63/2/2. There are storage warehouses together with other permanent structures, including water tanks and Security Sheds and other constructions surrounded by compound wall in the said extent. V.S.T. Industries Limited agreed to sell the aforesaid land in favour of the petitioner Company for a sum of Rs.5,75,00,000/-. Accordingly, the writ petitioner company deposited the entire sale consideration by way of Demand Drafts dated15-12-1998 drawn on Indian Overseas Bank, Guntur to establish petitioner's bona fidies in entering into an agreement of sale. Thereafter, an agreement of sale was entered between the parties. The Vendor i.e. V.S..T. Industries limited, obtained 'No objection Certificate' from the Income Tax Department, Union of India, Bangalore on 29-09-1999. After completing all the formalities, a sale deed was executed on 3-12-1999 by the Vendor in favour of the writ petitioner. Registration fee of Rs.77,60,391/- has been paid by the petitioner company before the Sub-Registrar, Sanjeevareddynagar, Hyderabad-3rd respondent. Since the document has not been released, the petitioner company has chosen to approach this Court with the prayer stated supra.

3. Respondents No. 2 and 3 filed counter affidavit. One V.Hanumanth Rao has sworn to the counter affidavit filed on behalf of the respondents No. 2 and 3. It is stated in the counter affidavit that the market value of land situated on the road side is Rs.6,000/- per square yard for commercial purpose and Rs.3,500/- per square yard for residential purpose, as per market value and basic value registers. The document bearing No. 103/99 submitted by the petitioner before the Sub-Registrar, Sanjeevareddynagar, Hyderabad, could not be released due to non-fixation of market value. It is further stated that fixation of market value is under examination by the Commissioner and Inspector General of Registration of Stamps A.P. Hyderabad. Soon after finalization and fixing of the market value and after collection of stamp duty, the document will be returned to the petitioner. 4. Reply affidavit has also been filed by the petitioner. It is stated in the reply affidavit that the respondents have no

jurisdiction to retain the document after registration.

5. I deem it appropriate to refer para 10 of the reply affidavit dated 2-1-2002 and it is thus:

> "*It is submitted that so far, no justification whatsoever has been forth coming for with holding the document registered as early as on 3-12-99. It is submitted that even according the statements made in the counter affidavit, such as they are, there is no basic value register relating to the property nor the value of the property purchased or any property in the vicinity thereof have been reflected in any register maintained by the respondents. The respondents have neither intimated to the petitioner so far of any proceedings pending with them nor have they indicated any provisions of law or rule under which they have detained the document after getting it registered on 3-12-1999. Even in the counter affidavit no provisions of law is cited nor any justification for the illegal, arbitrary or unauthorized act withholding the document. The provision cited viz., clause (2) of Section 2 of the Stamp Act deals with the expression "chargeable" which has no relevance whatsoever to the facts of this case".*

6. Respondent No.3 filed additional counter affidavit on 3-9-2002. It is stated in the additional counter affidavit that the petitioner has filed this writ petition without exhausting the statutory remedy available to him under Section 47-A of the Stamp Act and, therefore, the writ petitioner is liable to be dismissed.

7. During the course of the arguments, the learned Government Pleader for Revenue submits that the document is not yet registered and it is pending registration and, therefore, the number has been assigned as P-103/99. The petitioner filed the writ petition assuming that the document has been registered and it has been withheld after registration.

8 . Counter affidavit filed by the respondents also gives the impression as if the document has been registered. To know the factual aspect, a direction has been given to the respondents to place on record the document for verification by this Court. The learned Government Pleader for Revenue placed the original document along with the additional counter affidavit of the 3rd respondent. Perusal of the original document shows that it has not been registered by the 3rd respondent. This fact has been further clarified in the additional counter affidavit filed by the 3rd

respondent. I deem it appropriate to refer para 3 of the counter affidavit dated 5-10-2005 and it is thus:

> "*It is a mistake crepted in the counter filed by the then Sub-Registrar as the pending document No. 103 of 1999 is not registered till today. The statement made in the earlier counter that the document registered is a mistaken statement not made intentionally. The petitioner is very well aware of the fact that the document is not registered and kept pending and because of the pendency of the Writ Petition, the document could not be referred to under Section 47 (A) of Indian Stamp Act to the Collector, Hyderabad who is the District Registrar for determining the proper stamp duty. To avoid any doubt in the mind of the Writ Petitioner, pending document No.103/99 is also being produced before the Hon'ble Court on 6-10-2005 on the date of further hearing of the matter. As the petitioner has not shown the real market value of the property, it has been decided to refer the matter to the District Registrar under Section 47(A) of the Indian Stamp Act and the same will be done soon the Hon'ble Court passes final orders in the Writ Petition. Hence necessary directions maybe issued to enable the authorities to complete the enquiry under Section 47 (A) of Indian Stamp Act as expeditiously as possible on the reference to be made by the Sub-Registrar, Sanjeeva Reddy Nagar."*

9. It is evident that the document presented by the petitioner on 3-12-1999 is not registered and it is only pending registration and the number has been assigned accordingly as P 103/99.

10. Learned Senior Counsel appearing for the petitioner submits that the Sub-Registrar-3rd respondent having received the document cannot exercise the powers under Section 47-A of the Stamp Act after lapse of nearly six years. He further submits that the basis on which Sub-Registrar formed opinion that the document is under valued is unsustainable since value of properties situated in the relevant area was reassessed in the year 2002 and whereas the petitioner presented the document for registration in the year 1999. In support of his submissions, he placed reliance on the decisions of our High Court in ***Sub-Registrar, Kodad Vs. Amaranaini China Venkat Rao, Kasarla Narayana Reddy Vs. District Revenue Officer, Nalgonda,*** *and* ***M.Venkata Ramana Vs. Collector & District Registrar, Hyderabad.*** While submitting arguments, the learned counsel narrated sequence of

events right from the presentation of the document to the filing of the 2nd additional counter affidavit by the 3rd respondent on 7-10-2005. The sequences of events are as follows:

1. The petitioner presented the document for

Registration on 3-12-1999

2. Counsel for the petitioner addressed letter

to the 3rd respondent for release of the

document on 5-9-2001

3. Petitioner filed Writ petition on 4-12-2001

4. Writ petition came to be admitted on 5-12-2001

5. Interim orders came to be passed on 28-12-2001

6. Respondents 2 and 3 filed counter

affidavit on 4-01-2002

7. Additional counter-affidavit 3-9-2002

11. By narrating sequence of events, the learned counsel submits that the Sub-Registrar-3rd respondent cannot be permitted to withhold the document forever. The contention appears to be sound, prima facie. But on close scrutiny of the records, I do not detain myself long to reject the said contention. The petitioner presented the document on 3-12-1999. There is nothing on record to show that the petitioner company made any effort to know the fate of the document presented by it for registration till 5-9-2001 on which date the petitioner addressed a letter to the Sub-Registrar for release of the document. Ultimately, the petitioner filed writ petition on 5-9-2001 and obtained interim orders on 28-12-2001.

12. Learned Government Pleader appearing for the respondents submits that 3rd respondent could not exercise the power under Section 47-A of the Stamp Act,

because of the pendency of the matter in the Court. However, 3rd respondent sought clarification from the District Registrar and in the meanwhile the petitioner filed writ petition and obtained interim order. In that view of the matter, the 3rd respondent cannot be found fault.

13. Section 47-A of Indian Stamp Act, 1899 deals with Instruments of Conveyance under valued: For better appreciation, I deem it appropriate to extract Section 47-A of Indian Stamp Act, 1899 and it is thus:

> *"Where the registering officer appointed under the Registration Act, 1908, while registering any instrument of conveyance, exchange, gift, partition, settlement, release, agreement relating to construction, development or sale of any immovable property or power of attorney given for sale, development of immovable property, has reason to believe that the market value of the property which is the subject matter of such instrument has not been truly set forth in the instrument, or that the value arrived at by him as per the guidelines prepared or caused to be prepared by the Government from time to time has not been adopted by the parties, he may keep pending such instrument and refer the matter to the Collector for determination of the market value of the property and the proper duty payable thereon:*
>
> *Provided that no reference shall be made by the registering officer unless an amount equal to fifty per cent of the deficit duty arrived at by him is deposited by the party concerned.*
>
> *2) On receipt of reference under Sub-Section (1), the Collector shall, after giving the parties an opportunity of making their representation and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject matter of such instrument and the duty as aforesaid:*
>
> *Provided that no appeal shall be preferred unless and until the difference, if any, in the amount of duty is paid by the person liable to pay the same, after deducing the amount already deposited by him;*
>
> *Provided further that where after the determination of market value by the Collector, if the stamp duty borne by the instrument is found sufficient, the amount deposited shall be returned to the person concerned without interest;*

(3) The Collector may, suo motu, within two years from the date of registration of such instrument not already referred to him under sub-section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market-value of the property, which is the subject matter of such instrument, and the duty payable thereon and if, after such examination, he has reason to believe that the market value of such property has not been truly set forth in the instrument, he may determine the market value of such property and the duty as aforesaid in accordance with the procedure provided for in sub-section (2). The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty;

Provided that nothing in this sub-section shall apply to any instrument, registered before the date of commencement of the Indian Stamp (Andhra Pradesh Amendment) Act, 1971.

14. Under Section 47-A (1) where Registering Officer appointed under Registration Act comes to the conclusion that the value in the instrument has not been correctly mentioned, he may kept the instrument pending and refer the matter for determination of the market value of the property and the proper duty payable thereon.

15. The petitioner filed writ petition with the assumption that the document has been registered and therefore asserts that the Sub-Registrar has no authority to detain the document after registration and it is only the Collector who has to take up the matter by way of review.

16. The factual aspect is that as on this day the document is not registered. Therefore, the Sub-Registrar-3rd respondent has to exercise his power under Section 47-A of the Indian Stamp Act within a reasonable time, keeping in view sub-Rule 3 of Andhra Pradesh Stamp (Prevention of Under Valuation of Instruments) Rules, 1975.

17. In view of the above discussion, the writ petition is disposed of directing the Sub-Registrar-3rd respondent to pass appropriate orders under Section 47-A of the Indian Stamp Act within six weeks from the date of receipt of a copy of this order. No order as to costs.

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B.Seshasayana Reddy,J

7th October, 2005.

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B/o KM

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

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W.P.No. 24910 OF 2001

7th October, 2005.